

REMARKS

I. STATUS OF CLAIMS

In accordance with the foregoing, claims 1-5, 9-13, 24 and 25 are pending and under consideration.

II. REJECTION OF CLAIMS 1-5, 9-13, 24 AND 25 ARE REJECTED UNDER 35 U.S.C. 103(A) AS BEING UNPATENTABLE OVER NOVAK (US PATENT NO. 5,497,314)

Claim 1

Currently amended claim 1 has been amended to recite, pointer means for pointing by the human operator the individual object commodity in said taken images of the object commodities which images have been displayed on said display means.

Novak relates to an unmanned check-out station in which the items to be processed are conveyed by any appropriate means. See Abstract of Novak. On page 8, lines 38-40 of Novak, claim 1 specifically states, "A method for automatically recognizing and identifying, **without human intervention.**" Furthermore, Novak states that in order to identify the object, the data obtained from an image frame are transmitted to a microprocessor containing its database look-up files, wherein the data is then compared with the set of look-up items with similar characteristics. See Novak, column 4, lines 57-62. Accordingly, it is respectfully submitted that Novak does not describe the aforementioned recitation of currently amended claim 1.

In the outstanding Office Action, the Examiner asserts, "Novak discloses, e.g. FIGS. 1-12 an automated apparatus for tele-inventory using a camera, e.g. 10, for capturing digital images and marker means, e.g. col. 7, lines 27-33."

Within the cited portion of the reference, by the Examiner, is provided a description of a secondary check which is performed to increase the probability of a correct recognition. The specific mark which is described relates to the product name or bar code, with that mark being overlaid on the object record. See Novake, column 7, lines 27-33. The Applicants respectfully submit the aforementioned portion of Novak does not describe marker means for selectively labeling said taken image of the individual object commodity, which image has been pointed by said pointer means, with either one of a predetermined mark and a special mark other than the predetermined mark as recited in currently amended claim 1 of the present application.

Furthermore, the Applicants are unable to find a description within Novak describing a remote management apparatus that is **installed remotely** from the shop. Instead, all of the various functions described in Novak are accomplished at a single location. The Applicants respectfully submit Novak does not describe a remote management apparatus.

The Examiner concedes that Novak does not describe a pointer means. The Examiner asserts, "a camera capturing digital images using a pointer ...has been common knowledge in the camera art." The Applicant respectfully traverses the Examiner's statement and requests the Examiner produce authority for the statement. The Applicant specifically points out the following errors in the Examiner's action.

First, the Examiner uses common knowledge as the principal evidence for the rejection. As explained in M.P.E.P. § 2144.03(E):

any facts so noticed should . . . serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention. See M.P.E.P. § 2144.03(A) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion. See M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

Although the above comments are specifically directed to claim 1, it is respectfully submitted that the comments would be helpful in understanding various differences of various other claims over the cited reference.

In view of the above, it is respectfully submitted that the rejection is overcome.

Claim 12

In the outstanding Office Action, the Examiner concedes, "Novak does not explicitly disclose...being operated from a different time zone." The Examiner asserts, "a camera capturing digital images further implemented from a different time zone has been common knowledge in the camera art." The Applicant respectfully traverses the Examiner's statement and requests the Examiner produce authority for the statement. The Applicant specifically points out the following errors in the Examiner's action.

First, the Examiner uses common knowledge as the principal evidence for the rejection. As explained in M.P.E.P. § 2144.03(E):

any facts so noticed should . . . serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention. See M.P.E.P. § 2144.03(A) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion. See M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

Although the above comments are specifically directed to claim 12, it is respectfully submitted that the comments would be helpful in understanding various differences of various other claims over the cited reference.

In view of the above, it is respectfully submitted that the rejection is overcome.

III. CONCLUSION


In view of the above, it is respectfully submitted that the application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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Date: March 07, 2007

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